

INITIAL DRAFT OF RULES RELATING TO THE REGULATION OF PERSONAL EMERGENCY RESPONSE SYSTEM PROVIDERS (PERS)

February 2, 2004

This initial draft of rules for PERS providers was prepared by TDH staff for stakeholder review and input. The draft rules are based on discussions with stakeholders and staff review and analysis of Article 2, HB 28 (2003, Third Called Session) and Chapter 1702, Texas Occupations Code.

Stakeholder meetings in November 2003 (Robert Bushnell, Lifeline Systems, and Bill Pewitt) and January 2004 (Spud Newton, Texas Association of PERS, and Erica Phillips) included discussions regarding the relationship of PERS rules to the provisions and requirements of Chapter 1702, Occupations Code, and Article 2, HB 28.

TDH legal and program staff have reviewed Chapter 1702 to determine which of its provisions are applicable to PERS (as mentioned in §1702.006(b)). Staff published a "strike-through" copy of Chapter 1702 on January 12, 2004. This copy of the chapter is being distributed with the rules draft. Sections or provisions of the chapter that are not lined out are deemed "applicable" to PERS.

The applicable provisions are the legal authority for PERS rules, along with other general laws relating to state agencies. The applicable provisions, in addition to imposing certain requirements on PERS providers, also impose requirements upon TDH relating to the administration and operation of the regulatory program.

In each section, a box containing notes is inserted. The notes indicate the section's purpose or reference provisions of law that require a rule to read in a particular manner.

Stakeholders and interested parties are encouraged to review and comment on the draft rules. Reviewers may want to have their copy of the applicable provisions of Chapter 1702 handy when reading the draft rules.

NOTE: This draft has not been reviewed or approved by the department's legal counsel.

NOTE: This draft represents a "shell" draft, or a starting point, for rulemaking. Review by stakeholders and department staff will result in modifications, additions, and deletions to this document.

Comments and suggestions for improvements are welcome and may be provided to Stephen Mills, Program Specialist, via e-mail to stephen.mills@tdh.state.tx.us or regular mail to Stephen Mills,

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Proposed New 25 Texas Administrative Code, Chapter 131?

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**Section 1
Introduction**

Notes: This general information introduces the content and purpose of the chapter.
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(a) This chapter implements the applicable provisions of the Texas Private Security Act, Occupations Code, Chapter 1702, concerning the regulation of personal emergency response system providers.

(b) These sections cover definitions; fees; petition for rulemaking; application requirements and procedures; application processing, categories of licensure and registration; renewal of license or registration; changes of name and address; standards of conduct for PERS providers; consumer information; filing complaints and complaint investigations; disciplinary action; informal disposition; formal hearings; and guidelines for issuing licenses and registrations to persons with criminal convictions.

**Section 2
Definitions**

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Notes: The definitions section is a required component of rules. The definitions of "client," "contract," "advertising," and "shareholder" were taken from the existing Texas Commission on Private Security (TCPS) rules. The definition of PERS is from HB 28.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Act - The Texas Private Security Act, Occupations Code, Chapter 1702, as amended by the Texas Legislature.
- (2) Administrator - The department employee designated as the administrator of the regulatory activities authorized by the Act.
- (3) Applicant - A person or entity who applies for a license or registration to provide personal emergency response system services under the Act.
- (4) Business entity - A business operating under any legal business structure.
- (5) Board - The Texas Board of Health or its successor.
- (6) Client - A person who has entered into a contract to receive personal emergency response system services in return for financial or other considerations.
- (6) Commissioner - The Commissioner of the Texas Department of State Health Services.
- (7) Contract - An agreement between a person or company regulated under this chapter and a client. Such contracts may be oral or written, or in any combination thereof.
- (7) Department - The Texas Department of State Health Services.
- (8) Personal emergency response system - an alarm system that is installed in the residence of a person; monitored by an alarm systems company; designed only to permit the person to signal the occurrence of a medical or personal emergency on the part of the person so that the company may dispatch appropriate aid; and not part of a combination of alarm systems that includes a burglar alarm or fire alarm.
- (9) PERS - Personal emergency response system.

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(10) License - A license issued under the Act authorizing a person to provide personal emergency response system services.

(11) Licensee - A person that has been granted a license to provide personal emergency response system services in accordance with the Act.

(12) Registrant - A person that has been granted a registration to provide personal emergency response system services in accordance with the Act.

(13) Registration - A registration issued under the Act authorizing a person to provide personal emergency response system services.

(14) Shareholder - Any individual holding stock in a licensee who is actively involved in the normal course of operation and business of the licensee and shall not include those individuals who only hold stock in the licensee solely for the purposes of investment.

(15) Advertising - The direct solicitation for business which requires a license or registration to provide personal emergency response system services and involving more than a mere listing of a licensee's name, address, and telephone number.

Section 3

Fees

Notes: HB 2292 (78th Regular Session) requires that TDH regulatory programs issue licenses for two-year terms, and provides for staggering to achieve that. The bill also requires TDH regulatory programs to set license fees in amounts designed to allow TDH to recover from its license holders all of the direct and indirect costs in administering and enforcing the licensing program.

This section is written to allow fees to be established for one and two year terms of licenses and registrations.

The fee amounts cannot be determined until the program costs can be estimated. Program costs cannot be estimated until the program receives more reliable information concerning the number of licensees and registrants. This information should come from TCPS; however, it may be difficult for them to provide a number, as PERS providers have not previously been segregated (or flagged separately) from other TCPS alarm licensees and registrants.

We anticipate receiving additional information and estimating program costs within 30 days.

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The fees described in rules (s) and (t) are required by Senate Bill 1152 and House Bill 2985, 78th Regular Session. SB 1152 requires TDH to participate in the online license renewal system established by the Texas Online Authority. HB 2985 establishes an Office of Patient Protection within the Health Professions Council (HPC), to be funded by fees from HPC member license holders. (The TDH Professional Licensing Division is a member of HPC.)

- (a) \$25 - license, registration, or verification of exemption application fee
- (b) \$__ - initial Class B license to provide personal emergency response system services;
- (c) \$__ - initial registration as an installer of personal emergency response systems;
- (d) \$__ - initial registration as a manager or branch office manager of a personal emergency response system services company;
- (e) \$__ - initial registration as a security salesperson who is employed by a personal emergency response system services company to sell services offered by the company;
- (f) \$__ - initial registration as an owner, officer, partner, or shareholder of a personal emergency response system services company;
- (g) \$__ - renewal Class B license to provide personal emergency response system services for a license issued for a term of one year;
- (h) \$__ - renewal Class B license to provide personal emergency response system services for a license issued for a term of two years;
- (i) \$__ - renewal registration as an installer of personal emergency response systems issued for a term of one year;
- (j) \$__ - renewal registration as an installer of personal emergency response systems issued for a term of two years;
- (k) \$__ - renewal registration as a manager or branch office manager of a personal emergency response system services company issued for a term of one year;

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- (l) \$__ - renewal registration as a manager or branch office manager of a personal emergency response system services company issued for a term of two years;
- (m) \$__ - renewal registration as a security salesperson who is employed by a personal emergency response system services company to sell services offered by the company, issued for a term of one year;
- (n) \$__ - renewal registration as a security salesperson who is employed by a personal emergency response system services company to sell services offered by the company, issued for a term of two years;
- (o) \$__ - renewal registration as an owner, officer, partner, or shareholder of a personal emergency response system services company, issued for a term of one year;
- (p) \$__ - renewal registration as an owner, officer, partner, or shareholder of a personal emergency response system services company, issued for a term of two years;
- (q) \$__ - FBI fingerprint check or resubmission of FBI fingerprint check;
- (r) \$10- duplicate license, registration, or identification card;
- (s) The department is authorized to assess and collect fees to fund the Office of Patient Protection within the Texas Health Professions Council. There is an additional \$5 fee for each new application for licensure or registration and an additional \$1 fee per year for each license or registration renewal.
- (t) For all application and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.
- (u) Fees shall be made payable to Texas Department of State Health Services and may be in the form of a personal check, money order, or cashier's check.
- (v) Fees submitted to the Department are not refundable.

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Section 4
Petition for Rulemaking

Notes: This information provides a method for any person to request that a rule be adopted or amended. The rules referred to are rules of the Texas Board of Health on the subject.

Procedures for the submission, consideration, and disposition of a petition to adopt a rule are set out in §1.81 of this title (relating to Petition for the Adoption of a Rule).

Section 5
Application Requirements and Procedures

Notes: This section sets out requirements for the initial application process. Some rules below are "standard" within TDH professional licensing programs and some are from the existing TCPS rules.

The text of rule (b)(11) is a requirement of the Act.

Question: Can out-of-state corporations meet the requirements of (b)(4)?

(a) An applicant for a license or a registration must submit all required information on official application forms prescribed by the department and submit the required application fee and the initial license or registration fee.

(b) The application form shall contain the following information:

(1) specific information regarding personal data; full legal name of individual or business entity; date of birth; social security number; taxpayer identification number; information regarding other licenses, registrations, permits, and certifications held by applicant; and information regarding misdemeanor and felony convictions of applicant;

(2) trade names and addresses of all locations and branch offices at which the applicant intends to conduct business;

(3) if applicant is a corporation or other business entity, specific information regarding type of ownership, registered address, and names and addresses of all officers, directors, registered agents and major shareholders;

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(4) if applicant is a corporation, a current Certificate of Existence or Certificate of Authority issued by the Texas Secretary of State and a current letter from the Texas Comptroller of Public Accounts verifying that the corporation is current in the payment of franchise taxes;

(5) if the applicant is an individual, two classifiable sets of fingerprints of the applicant, or, if the applicant is an entity other than an individual, of each officer and of each partner or shareholder, accompanied by the fee required for a criminal history check;

(6) a statement that the applicant has read the Act and these rules;

(7) a statement that the applicant, if issued a license or registration, shall return the license or registration to the board upon revocation or suspension of the license or registration or upon lawful demand;

(8) a statement that the applicant understands that fees and materials submitted in the application process are nonrefundable and nonreturnable;

(9) a statement that the applicant agrees to comply with all state and federal laws and regulations regarding the sale and delivery of personal emergency response system services;

(10) a statement that the information contained in the application is truthful and complete;

(11) evidence of a general liability insurance policy on a certificate of insurance form prescribed by the department and countersigned by an insurance agent licensed in this state or a certificate of insurance for surplus lines coverage obtained under Article 1.14-2, Insurance Code, through a licensed Texas surplus lines agent resident in this state; and

(12) the signature of the applicant.

(c) [Draft examination rule(s) to go here, see the Act, §1702.117.]

Section 6
Application Processing

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<p>Notes: These rules are across-the-board for TDH professional licensing programs. They set out timeframes for staff to meet when processing applications.</p>

The department shall comply with the following procedures in processing applications for licenses and registrations and applications for license and registration renewal.

(1) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. The license or registration may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(A) letter of acceptance of application for a license or registration - 30 working days;

(B) issuance of license or registration renewal after receipt of documentation of all renewal requirements - 20 working days; and

(C) letter of denial of license or registration - 30 working days.

(2) In the event an application is not processed in the time periods stated in paragraph (1) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the administrator. If the administrator does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(3) Good cause for exceeding the time period is considered to exist if the number of applications for licenses, registrations, and renewals exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.

(4) If a request for reimbursement under paragraph (2) of this section is denied by the administrator, the applicant may appeal to the commissioner for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner at the address of the department that he or she requests full reimbursement of all fees paid because his or

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her application was not processed within the applicable time period. The administrator shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The program administrator shall provide written notice of the commissioner's decision to the applicant. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(5) Contested cases. The time periods for contested cases related to the denial of licenses, registrations, or renewals are not included within the time periods stated in paragraph (1) of this section. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

Section 7
Categories of Licensure and Registration

Notes: This section describes the different types of licenses/registrations to be issued to PERS providers. Rule (a) is from the Act. Rule (b) mirrors the language of HB 28.

(a) A person acts as a personal emergency response system provider if the person sells, installs, services, monitors, or responds to only personal emergency response devices or systems. Unless a person holds a license as a PERS provider, a person may not act as a PERS provider, offer to perform PERS services, or engage in business activity for which a license to provider PERS services is required.

(b) The following individuals engaged in providing PERS services for a licensee must hold a valid registration issued by the department:

(1) an alarm systems installer who installs, maintains, or repairs only personal emergency response systems;

(2) a manager or branch office manager;

(3) a security salesperson who is employed by a licensee to sell services offered by the licensee; and

(4) an owner, officer, partner, or shareholder of a licensee.

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Section 8
Renewal of License or Registration

Notes: This section sets out procedures for renewing licenses and registrations. Rules (j) thru (l) are requirements of the Act. The rules relating to active military duty are across-the-board legislative requirements. The rules relating to student loan default and child support/custody are across-the-board legislative requirements.

- (a) The purpose of this section is to set out the rules governing license or registration renewal.
- (b) When issued, a license or registration is valid for at least one year or two years, as determined by the department, commencing on the date of issuance of the initial license or registration.
- (c) A licensee or registrant must renew the license or registration annually or biannually, as determined by the department. The renewal date of a license or registration shall be the last day of the month in which the license or registration was originally issued.
- (d) At least 30 days prior to the expiration date of a license or registration, the department shall send a notice of renewal to the licensee's or registrant's address in the department's records. The notice shall inform the licensee or registrant of the impending expiration and of the procedures for renewal.
- (e) The renewal process shall require the applicant to provide the preferred mailing address and the disclosure of misdemeanor or felony convictions.
- (f) A licensee or registrant has applied for renewal of the license or registration when the licensee or registrant has mailed the fully completed renewal form and the required renewal fee to the department prior to the expiration date of the license or registration. The postmark date shall be considered the date of mailing. If renewing electronically, the licensee or registrant has applied for renewal of the license or registration upon successful completion of the online renewal process.
- (g) After review of the renewal application, the department shall issue a renewed license or registration to a licensee or registrant who has met all requirements for renewal.
- (h) Each licensee or registrant is responsible for renewing the license or registration before the expiration date and shall not be

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excused from paying additional fees or penalties. Failure to receive notification from the department prior to the expiration date of the license or registration shall not excuse failure to file for timely renewal.

(i) A licensee or registrant whose license or registration has expired may not provide, sell, or install personal emergency response system services in this state, unless exempt according to the Act.

(j) A person whose license or registration has been expired for 90 days or less may renew the license or registration by paying to the department a renewal fee that is equal to one and one-half times the normally required annual renewal fee.

(k) A person whose license or registration has been expired for more than 90 days but less than one year may renew the license or registration by paying to the department a renewal fee that is equal to two times the normally required annual renewal fee.

(l) A person whose license or registration has been expired for one year or more may not renew the license or registration. The person may obtain a new license or registration by complying with the requirements and procedures for an original license or registration.

(m) A licensee or registrant whose check for a licensing or registration fee is not honored by the financial institution shall remit to the department a money order or cashier's check within 30 days of the date of the licensee's or registrant's permit holder's receipt of the department's notice. If proper payment is not received, the license or registration shall not be renewed. If a renewed license or registration has already been issued, it shall be ineffective.

(n) If a licensee or registrant fails to timely renew his or her license or registration because the licensee or registrant is or was on active duty with the armed forces of the United States of America serving outside the state of Texas, the licensee or registrant may renew the license or registration pursuant to this subsection.

(1) Renewal of the license or registration may be requested by the licensee or registrant, the licensee's or registrant's spouse, or an individual having power of attorney from the licensee or registrant. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after expiration of the license or registration. Licensees or registrants who renew in

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accordance with this subsection shall be excused from paying late fees and penalties.

(3) A copy of the official orders or other official military documentation showing that the licensee or registrant is or was on active duty serving outside the State of Texas shall be filed with the department along with the renewal form.

(4) A copy of the power of attorney from the licensee or registrant shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(o) The department shall not renew a license or registration if renewal is prohibited by the Education Code, §57.491 (relating to Loan Default Ground for Nonrenewal of Professional or Occupational License).

(p) The department shall not renew a license or registration if renewal is prohibited by a court order or attorney general's order issued pursuant to the Family Code, Chapter 232 (relating to Suspension of License), for failure to pay child support or failure to comply with a court order providing for the possession of or access to a child.

Section 10

Standards of Conduct for PERS Providers

Notes: This important section imposes requirements on PERS providers and the services they deliver. It also establishes requirements for the relationship between TDH and the regulated population (PERS providers.)

Some of the rules regarding advertising mirror existing TCPS rules; others are based on rules adopted by other TDH licensing programs. Rule (b) relating to the training program was a suggestion from the TX Association of PERS. Other rules relating to the provision of services were based on staff's growing knowledge of PERS.

Our intent is that these rules protect and promote public health and safety and ensure that we can effectively regulate or discipline a "bad" provider, while at the same time not imposing an unnecessary and burdensome requirement on PERS providers and businesses.

The rules in this section will be used (or cited) if TDH investigates a consumer complaint and seeks to impose disciplinary action on a licensee or registrant.

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The language in rule (r) relating to habitual drunkenness is from the Act.
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(a) An advertisement by a licensee or registrant soliciting or advertising business must contain the licensee's or registrant's name and address as shown in the department's records.

(b) A licensee shall require each of its employees or other persons who monitor or respond to personal emergency response devices or systems to complete a structured, on-the-job training program.

(1) A licensee shall include content in the training program that is customized and specific to the services provided by the licensee and to the licensee's consumers.

(2) A licensee shall, upon request by the department, provide documentation regarding the content of the training program and verifying that the training program has been successfully completed by all required personnel.

(c) A licensee may be legally responsible for the conduct in the licensee's business of each employee of the licensee while the employee is performing assigned duties for the licensee.

(d) A licensee shall maintain records on employees, including personally identifying information required by law to obtain employment, employment history, and residence address.

(e) A licensee shall at all times post the person's license in a conspicuous place in the principal place of the licensee's business and each branch office license in a conspicuous place in each branch office of the licensee.

(f) A licensee shall notify the department in writing not later than the 14th day after the date of:

(1) a change of address for the licensee's principal place of business;

(2) a change of a name under which the licensee does business;
or

(3) a change in the licensee's officers or partners.

(g) A licensee shall notify the department in writing not later than the 14th day after the date a branch office is established, is closed, or changes address or location.

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(h) A licensee shall provide PERS services pursuant to a written contract signed by the licensee and the client or the client's authorized representative. A licensee shall provide a copy of the contract to the client or the department upon request. The contract shall include, but not be limited to, a description of the PERS services and products to be provided and the fees for services and arrangements for payment. A licensee shall inform the client in writing of any changes to the contract and shall secure the client's signature verifying agreement with the changes.

(i) An advertisement or announcement used by a licensee or registrant relating to the provision of PERS services shall not contain information which is false, misleading, inaccurate, incomplete, out of context, deceptive or not readily verifiable. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, and billing statements.

(j) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes, but is not limited to, advertising that:

(1) makes any material misrepresentation of facts or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes any representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a licensee's services with another licensee's services unless the comparison can be factually substantiated;

(4) contains a testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or licensure of a licensee;

(6) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of consumer; or

(7) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

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(k) A licensee or registrant who retains or hires others to advertise or promote the licensee's business remains responsible for the statements and representations made.

(l) Licensees and registrants are bound by the provisions of the Act relating to PERS providers and this chapter.

(m) A licensee or registrant shall cooperate with the department by furnishing documents or information and by responding to a request for information from the department.

(n) A licensee or registrant shall comply with the terms of any order issued by the department relating to the licensee or registrant.

(o) A licensee or registrant shall not interfere with a department investigation by the willful misrepresentation of facts to the department or by the use of threats or harassment against any person.

(p) A licensee or registrant shall take reasonable action to inform medical or law enforcement personnel if the licensee or registrant determines that there is a definite probability of imminent physical injury to a client or determines that an emergency situation exists.

(q) For each client, a licensee or registrant shall maintain complete and accurate records including, but not limited to, the dates of services, the activation of and response to a client's alarm device, and billing information.

(r) A licensee or registrant shall not engage in habitual drunkenness or be addicted to or dependent upon narcotics or illegal substances.

(s) A licensee or registrant shall not engage in sexual contact or sexual exploitation with a client. It is not a defense to disciplinary action if the sexual contact or sexual exploitation occurred with the consent of the client.

(t) Sexual contact means sexual contact as defined by the Texas Penal Code, §21.01; deviate sexual intercourse as defined by the Texas Penal Code, §21.01; sexual intercourse as defined by the Texas Penal Code, §21.01; or requests by a licensee or registrant for conduct described in Texas Penal Code, §21.01

(u) Sexual exploitation means a pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be

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construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person.

**Section 11
Consumer Information**

Notes: These requirements are from the Act.

(a) The department shall prepare information of interest to consumers or recipients of services regulated under the Act describing the department's regulatory functions and the procedures by which complaints are filed with and resolved by the department.

(b) The department shall make the information available to the public and appropriate state agencies.

**Section 11
Changes of Name or Address**

Notes: This section places the responsibility for address updates on the licensee or registrant.
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(a) The purpose of this section is to set out the responsibilities and procedures for name and address changes by a registrant.

(b) The registrant shall notify the department of changes in name or preferred mailing address within 30 days of such change(s).

(c) Notification of changes shall be made in writing or by telephone and shall include the former and present name, registration number, former and present mailing address, and a copy of the legal name change document, marriage license, or divorce decree, if applicable.

(d) Before a replacement registration will be issued by the department, the registrant shall return any previously issued document(s).

(e) It is the responsibility of the registrant to comply with the provisions of this section. Notice of complaints, violations, disciplinary action, or other correspondence sent to the address in the department's records are deemed received by the registrant.

(f) A licensee that is a corporation or other business entity shall report changes of name or address to the department in advance of the effective date of the change and shall submit documentation of the change as directed by the department.

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(g) A license issued to a corporation or other business entity is not transferable in the event of change of ownership of the corporation or business entity. The new owner shall comply with all application requirements and procedures for obtaining an original license.

Section 11

Filing Complaints and Complaint Investigations

Notes: This information reflects our internal procedures for receiving, processing, and investigating consumer complaints.

(a) Complaints alleging that a person has violated the Act or this chapter, may be filed with the department on a department complaint form or in writing by regular mail, facsimile, or electronic mail. The department may initiate a complaint based on a telephone call if there is a sufficient basis and documentation to proceed.

(b) Upon receipt of a written complaint, the department shall send the complainant an acknowledgment letter. The department shall, at least as frequently as quarterly, notify the complainant and the respondent of the status of the complaint until its final disposition.

(c) Anonymous complaints may be investigated by the department if there is a sufficient basis and documentation to proceed.

(d) The department shall investigate the complaint and report the findings to the appropriate department staff who may recommend that the license or registration be revoked, suspended, placed on probation, or that other appropriate action as authorized by law be taken.

(e) If department staff determine that the complaint is not within the department's jurisdiction, the complainant will be notified. If warranted, the complaint may be referred to another governmental agency for review.

(f) If department staff determine that there are insufficient grounds to support the complaint, the complaint shall be dismissed. Written notice of the dismissal will be provided to the licensee or registrant or person against whom the complaint has been filed and the complainant.

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Section 12
Disciplinary Action

Notes: These provisions detail our authority to take disciplinary action. The basis for this section is the applicable sections of the Act, as well as the Administrative Procedure Act (Government Code, Chapter 2001), which sets out procedures state agencies must follow when taking disciplinary action. These procedures ensure that a licensee has due process rights, including the right to show that a law/rule was not violated and the right to have the matter heard by the State Office of Administrative Hearings.

The authority for (a) and (b) is the Act.

(a) The department may deny a license or registration application, suspend or revoke a license or registration, or place a licensee or registrant on probation for a violation of the Act or this chapter.

(b) The department may also impose an administrative penalty for a violation of the Act or this chapter. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The amount of each separate violation may not exceed \$200.

(c) Prior to institution of formal proceedings to deny a renewal application, revoke, suspend, or place on probation or impose an administrative penalty, the department shall give written notice to the licensee or registrant by certified mail, return receipt requested, of the facts or conduct alleged to warrant the proposed action, and the licensee or registrant shall be given an opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(c) If disciplinary action of a licensee or registrant is proposed, the department shall give written notice by certified mail, return receipt requested, that the licensee or registrant must request, in writing, a formal hearing within 20 days of receipt of the notice, or the right to a hearing shall be waived and the action shall be taken.

(d) The department may request the Attorney General to bring an action for an injunction to prohibit a person from violating the Act or this chapter.

(e) The department may not deny a license or registration application or suspend, revoke, or probate a license or registration or impose administrative penalties against a licensee or registrant based on the refusal of the licensee or registrant to:

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(1) submit to a genetic test; or

(2) reveal:

(A) whether the applicant, licensee, or registrant has submitted to a genetic test; or

(B) the results of any genetic test to which the applicant, licensee, or registrant has submitted.

Section 13

Informal Disposition

Notes: This section reflects our standard practice of first attempting to resolve complaint and disciplinary matters informally.

(a) Informal disposition of any complaint or contested case involving a licensee or registrant or an applicant for a license or registration may be made through an informal conference held to determine whether an agreed settlement order may be secured.

(b) An informal conference shall be voluntary.

(c) A conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(d) The licensee or registrant, the licensee's or registrant's attorney, and department staff may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(e) The complainant shall not be considered a party in the informal conference but shall be given an opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the informal conference.

(f) At the conclusion of the informal conference, department representatives may make recommendations for informal disposition of the complaint or contested case or for any disciplinary action authorized by the Act. The department representatives may also:

(1) conclude that the department lacks jurisdiction;

(2) conclude that a violation of the Act or this chapter has not been established;

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(3) order that the investigation be closed; or

(4) refer the matter for further investigation.

Section 14

Formal Hearings

Notes: Formal hearings are conducted not by TDH, but by the State Office of Administrative Hearings.
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(a) A formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(b) Copies of the formal hearing procedures are indexed and filed in the administrator's office, Professional Licensing and Certification Division, 1100 West 49th Street, Austin, Texas 78756-3183, and are available for public inspection during regular working hours.

Section 15

Guidelines For Issuing Licenses or Registrations to Persons with Criminal Convictions

Notes: This section establishes (or references) guidelines that TDH uses to determine whether to issue or deny a license to a person who has been convicted of a crime.

The provisions of the Act supercede the provisions of Occupations Code, Chapter 53, if there is a conflict.

(a) The purpose of this section is to comply with the requirements of the Occupations Code, Chapter 53, Subchapter C (relating to Notice and Review of Suspension, Revocation, or Denial of License) and with the Occupations Code, Chapter 1702.364 (relating to Summary Suspension) and the Occupations Code, Chapter 1702.113 (General Qualifications for License.)

(b) The department may deny a license or registration application or a license or registration renewal application, or revoke, suspend, or place on probation an existing license or registration if an applicant, licensee, or registrant has been convicted of a crime (felony or misdemeanor) according to the following guidelines:

(1) those criminal convictions which evidence an unwillingness or inability to comply with the Act or this chapter may be asserted as a basis to deny a license or registration or to institute disciplinary action against an existing license or registration; and

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(2) the factors and evidence listed in the Occupations Code, Chapter 53, Subchapter B (relating to Ineligibility for License) shall be considered in determining eligibility for an original or renewal license or registration.

(c) In accordance with the Act, the department may deny an application for a license or registration or for the renewal of a license or registration if the applicant has been convicted in any jurisdiction of a Class B misdemeanor or equivalent offense if the fifth anniversary of the date of conviction has not occurred before the date of application, unless a full pardon has been granted for reasons relating to a wrongful conviction.